Filed 3/26/19 Marriage of Shia CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of GUNTHER and LILY SHIA.	B286864
GUNTHER SHIA, Respondent, v. LILY SHIA, Appellant.	(Los Angeles County Super. Ct. No. LD071307)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Lily Shia, in pro. per.; and Law Office of Leslie Ellen Shear and Julia C. Shear Kushner for Appellant. [*Retained*.]

No appearance for Respondent.

The issue on appeal is whether the family law court abused its discretion in denying appellant Lily Shia's request for a restraining order pursuant to the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.) against her former husband, Gunther Shia[1] and in excluding from the hearing on that request a video in French of Lily's conversation with Gunther and Lily's four-year old daughter. We conclude the family law court did not abuse its discretion in making either ruling and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties married on May 5, 2011. In July 2013, Lily gave birth to their daughter. On May 5, 2015, Gunther filed a petition for dissolution of marriage in the Los Angeles family law court. On December 16, 2015, the family law court "partially granted" Lily's request for a temporary restraining order (TRO) against Gunther and set a hearing on whether to enter a permanent restraining order for February 22, 2016.[2]

On February 19, 2016, the parties, each then represented by counsel, entered into a settlement agreement.[3] That agreement set forth terms regarding custody and visitation, and required Lily to dismiss her pending request for a restraining

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[1] We will refer to the parties by first name for clarity, not out of familiarity or disrespect. (See *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.)

[2] The documents the parties filed below in connection with that TRO are not in the appellate record.

[3] Except for oral argument where counsel made a limited appearance on behalf of Lily, Lily has been self-represented on appeal.

order with prejudice. It also limited the relevance in any future restraining order hearing of Gunther's acts of abuse predating February 19, 2016 and alleged in Lily's then pending request for a permanent restraining order.

More specifically, the settlement agreement states: "A. No act or event prior hereto, including but not limited to those alleged in [Lily]'s [request for a] domestic violence [restraining order], may be alleged to, disclosed to or considered by the Court in connection with any request by [Lily] for a temporary domestic violence restraining order ('TRO'). [¶] B. If any TRO requested by [Lily] is granted, then at the hearing on the permanent restraining order [Lily] can present evidence of acts prior to the effective date of this Partial Stipulated Judgment [February 19, 2016] ('past acts'), provided however, that the Court cannot consider the evidence of past acts and cannot issue the permanent restraining order if: [¶] (1) The Court determines that [Lily] did not prove by a preponderance of the evidence that the act(s) alleged to have taken place after the effective date of this Partial Stipulated Judgment ('the alleged recent act(s)') occurred; or, [¶] (2) That recent alleged recent act(s) do (does) not warrant a permanent restraining order."

On February 22, 2016, the family law court, through Judge Virginia Keeny, entered a judgment of dissolution pursuant to Gunther's petition and the parties' settlement agreement.

On October 3, 2017, the family law court, through Judge Shirley K. Watkins, granted Lily's second request for a TRO against Gunther with respect to Lily and their daughter.[4]

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[4] The October 3, 2017 TRO prohibited Gunther from harassing, attacking, striking, threatening, assaulting (sexually

In her declaration attached to that request, Lily stated her daughter had reported that Gunther hurt and hit the child, the child had markings on her ankles and left inner thigh, Gunther had a gun, Gunther wanted to remove the child from the United States, and the child returned from overnight visits with Gunther with bruises.

Lily submitted a declaration and attached copies of six photographs to her declaration. She annotated the following dates on a page containing four of the photographs: September 14, 2017, September 11, 2017, September 29, 2017, July 17, 2017, and July 31, 2016. Two of the photographs are undated except there are annotations indicating the photographs depict the daughter as a baby. Lily claims the photographs show injuries to her daughter's leg, back, face, thigh, and ankles, and that one photograph shows her daughter at age one in the bath "holding his business," maybe referencing the child's genitals although we acknowledge the picture is unclear. We have reviewed the photographs and observe they show scrapes to the daughter's left elbow and right knee (and perhaps a different cut on the knee). There is also a photograph depicting a faint discolored circle on her right shoulder.

Lily also proffered a video of the interior of her car while she was driving her daughter. The video is in French. She

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or otherwise), hitting, following, stalking, molesting, destroying personal property, disturbing the peace, keeping under surveillance, impersonating (on the Internet, electronically, or otherwise), blocking movements, contacting, or taking any action to obtain the addresses or locations of Lily and their daughter, except that Gunther was allowed to have peaceful contact with Lily and their daughter as required for court-ordered visits with the daughter.

lodged a purported copy of that video with English subtitles on appeal but not below. Similarly, she lodged a video on appeal (but not below) appearing to show a bruise on the child's shoulder blade and a one-inch scrape on the left side of the child's mid-back.

In her declaration, Lily described incidents of Gunther's purported abuse against her and her daughter. Except for the injuries she annotated in four of the aforementioned photographs, all these incidents predate February 19, 2016. For example, Gunther hit himself and threatened to kill himself; said he was "was dying of rage"; told Lily, "I warned you what would happen if you chose the baby"; gestured a pistol with his hands and told Lily, "I should've killed you when I had the chance"; told Lily, "The Fucking baby!!!!! . . . You deserve pain"; threw bananas on the stairs to make Lily slip and fall, knowing Lily's eyesight was poor in the morning; sent Lily numerous text messages calling her expletives and other names; told Lily, "It's [Baby] coming out one way or the other" in reference to his attempts to persuade Lily to have an abortion before the child was born; exposed the child to sexual conduct; manipulated Lily by professing his love for her and, in the same breath, accusing Lily of choosing the child over him; "went through" Lily's phone; drove with the child in a car seat placed in the front passenger seat, which placement Lily believed was dangerous for her daughter; told Lily, "I cannot forgive your stupidity . . . neither will [the child]"; and took possession of the daughter's foreign passport. (Emphasis omitted.) Lily further asserted Gunther is not a United States citizen; has a pilot's license; and has a Malaysian diplomat for a father who, Lily believed, would aid Gunther in absconding with the daughter to Malaysia.

Gunther filed a response denying Lily's allegations. He also filed objections and a request to strike portions of Lily's materials. The family law court sustained Gunther's objections to Lily's statement that the daughter told Lily that Gunther hit her.

On October 26 and 30, 2017, the family law court, through Judge Watkins, held a trial on Lily's request for a permanent restraining order.[5] Gunther appeared and was represented by counsel. Lily was self-represented. The family law court ruled that the facts set forth in her declaration predated February 19, 2016, Lily did not prove abuse occurring subsequent to that date, and the parties' settlement agreement barred consideration of evidence of pre-February 19, 2016 abuse without proving that subsequent abuse occurred or that the subsequent acts warranted a permanent restraining order.

The family law court allowed Lily to play the aforementioned video taken during Lily's drive with her daughter, which Lily testified she recorded on January 17, 2017 and contained the daughter's saying Gunther hit the daughter on the back. The family law court stated the video was not "very helpful" because there was no transcript of it, the child could barely be heard, the child was speaking in French, and Lily did not timely request an interpreter.

The family law court made the following factual findings: (1) Lily produced no document reflecting an alleged rash around the child's genitals; (2) the child's psychotherapist was a mandated reporter of child abuse and reported no such abuse;

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[5] After granting a TRO, the family law court may enter a restraining order with a duration of not more than five years. (Fam. Code, § 6345, subd. (a).)

(3) the Department of Children and Family Services found complaints of abuse to be inconclusive; (4) a family friend credibly testified that at a July 2017 birthday party, the child reacted poorly to Lily, ran to Gunther instead, and said, "no mommy, no mommy"; (5) Gunther's coworker and friend testified credibly that at a September 2017 concert at the Hollywood Bowl, he saw the child break away from Gunther and fall on her hands and knees when they reached the top of an escalator, and then saw Gunther brush off her knee.

The family law court denied Lily's request for a restraining order and dissolved the October 3, 2017 TRO. It reasoned as follows: "[Lily] ha[s not] met [her] burden by a preponderance of the evidence with credible evidence that [her] daughter has suffered any kind of injury at the hands of her father." Additionally, Lily has "proven nothing . . . except that [the child] is a toddler who is very active, who runs around and plays and has scrapes on her elbows and knees." The family law court further stated it did "not find that [Lily] met [her] burden of proving that there is any basis to grant a restraining order for the reasons that [Lily] stated." The family law court's minute order provides, "Having found no basis for the issuance of a permanent restraining order, the Court hereby denies [Lily]'s request."

Lily timely appealed.[6] Gunther did not file a brief. On November 16, 2018, we sent a notice of default to Gunther and

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[6] To the extent Lily argues the family law court erred in denying her request to change "a visitation schedule to eliminate overnight visits, restrict the father's travels with the minor child to any non-Hague country, and return of the child's passports to the mother," she may not do so because her notice of appeal

alerted him that if he did not cure that default within 15 days or demonstrate good cause for relief from default, "the appeal will be submitted for decision upon the record and appellant's opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)" We also informed Gunther that "failure to file a brief will be deemed a waiver of oral argument." (Emphasis omitted.) Gunther still did not file a brief within the required time period or show good cause for not doing so.

On February 25, 2019, we sent Gunther a courtesy notice of the setting of oral argument. On March 1, 2019, Gunther requested oral argument. On March 4, 2019, we returned his request for oral argument and stated he did not file a brief and referenced our November 16, 2018 notice of default.[7]

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specifies only the order denying her request for a restraining order. (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661 [beyond liberal construction rule to construe notice of appeal as relating to different order]; *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9 [appellate court dutybound to consider appealability because it implicates jurisdiction].)

We, however, observe that at an October 29, 2015 ex parte hearing regarding custody, the family law court ordered that "the child may not be taken outside" Los Angeles and Ventura Counties pending the next hearing. The family law court also ordered that the daughter's passport be returned to counsel for the party possessing the passport until the next hearing.

[7] Thus, we "decide the appeal on the record, the opening brief, and any oral argument by" Lily. (Cal. Rules of Court, rule 8.220(a)(2); *Gou v. Xiao* (2014) 228 Cal.App.4th 812, 817, fn. 3 [considered only appellant's materials where respondent did not file responsive brief in appeal of order denying domestic violence restraining order following TRO].)

STANDARD OF REVIEW

An order denying an application for a restraining order under the DVPA is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6) [orders granting or dissolving injunction]; see *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 332 [order denying TRO under DVPA appealable]; *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 325 [no dispute order on renewal of domestic violence restraining order appealable under Code of Civil Procedure section 904.1, subdivision (a)(6)].)

"The standard of review for an order denying injunctive relief is abuse of discretion, because ' " 'granting, denial, dissolving or refusing to dissolve a permanent or preliminary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case' " . . . [Citation.]' [Citation.] 'This standard applies to a grant or denial of a protective order under the DVPA. [Citation.]' " (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495 (*Nadkarni*).) We also review rulings on evidentiary objections for abuse of discretion. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.)

" 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) "We may not substitute our assessment of the credibility of a witness in place of the credibility assessment of the trial court." (*In re Ana C.* (2012) 204 Cal.App.4th 1317, 1329 (*Ana C.*).)

DISCUSSION

Family Code section 6200 authorizes the family law court to issue a restraining order for the purpose of preventing acts of domestic violence and abuse, and ensuring a period of separation of the persons involved for a period sufficient to enable those persons to seek a resolution of the causes of those acts. "An order may be issued . . . to restrain any person for the purpose specified in [Family Code s]ection 6220, if an affidavit or testimony and any additional information provided to the court pursuant to [Family Code s]ection 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order." (Fam. Code, § 6300, subd. (a); *Nadkarni*, *supra*, 173 Cal.App.4th at p. 1494.)

To justify issuance of a restraining order, the proponent of that order must show "to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300, subd. (a); *Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 783 [distinguishing standard for issuance of restraining order following TRO from renewal of restraining order].) Thus, "[t]he DVPA requires a showing of past abuse by a preponderance of the evidence." (*In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 226.) " '[T]he requisite abuse need not be actual infliction of physical injury or assault' " because "abuse" under the DVPA includes "several types of nonviolent conduct that may constitute abuse" such as stalking, threatening, and disturbing the peace. (*Nadkarni*, *supra*, 173 Cal.App.4th at p. 1496.)

Here the family law court found Lily's evidence of post-February 19, 2016 abuse by Gunther not credible and that Lily did not satisfy her burden of establishing past acts of abuse by a preponderance of the evidence. Despite Lily's assertion that the trial court erred in making these findings, the standards of review that govern this appeal do not allow us to reweigh evidence or overturn the family law court's credibility finding. (*Ana C.*, *supra*, 204 Cal.App.4th at p. 1329.)

Lily contends the family law court should have considered acts of Gunther's alleged pre-February 19, 2016 abuse, despite her stipulation limiting a family law court's consideration of those acts as set forth above.[8] Even if the family law court had considered the alleged pre-February 19, 2016 acts, the totality of the evidence regarding the parties' interaction with one another (including the trial court's expressed concerns with Lily's

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[8] For the first time on appeal, Lily argues that stipulation contravenes public policy. Specifically, Lily contends the judicial council forms regarding a request for a domestic violence restraining order (DV-100 and DV-101) call for facts about past abuse and that a family law court may issue a domestic violence restraining order "simply on the basis of an affidavit showing past abuse." Because Lily did not raise those contentions below, they are forfeited. We express no opinion on whether the stipulation would violate public policy as applied to Lily or her daughter. (*Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591–592 [arguments raised first time on appeal forfeited].)

Similarly, at oral argument Lily asserted that the evidence of Gunther's pre-February 19, 2016 conduct was admissible to evaluate Gunther's credibility irrespective of the terms of the stipulation. Because she did not raise that argument below, we do not address it.

credibility regarding the post-February 19, 2016 events) does not indicate the trial court abused its discretion in denying the requested restraining order. Thus, even if arguendo the family law court erred in excluding allegations of Gunther's pre-February 19, 2016 conduct, any such error was harmless.

We reviewed Lily's car video purportedly recording her daughter's statement that Gunther hit her on the back on January 17, 2017. Lily and the child were speaking in French, but Lily did not provide the family law court with the required English translation, certified under oath by a qualified interpreter. (Cal. Rules of Court, rule 3.1110(g).) Instead, Lily submitted a translation certificate to us, and not the family law court, which is dated December 7, 2017. We fail to find fault with the family law court for not crediting a video in a foreign language that could have been translated but was not until well after the hearing was over.

Additionally, the belated translation reveals the daughter said her father hit her gently, her father "is not bad. He's my dad," and indicated she wanted to play with her father after dinner that day. These statements appear inconsistent with Lily's allegation that Gunther abused the child and underscore that any error in not giving much weight to the video because of its inaudibility in a foreign language was harmless.

In sum, the family law court did not abuse its discretion in denying Lily's request for a restraining order.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

CHANEY, Acting P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.